Supreme Court, U.S.
FILED

931167 JAN 18 1994

OFFICE OF THE CLERK

No. 93-

In The

Supreme Court of the United States

October Term, 1993

BONNIE L. HICKLE,

Petitioner,

v.

AMERICAN SERVICE CORPORATION OF SOUTH CAROLINA,

Respondent.

On Petition For A Writ Of Certiorari To the Supreme Court of South Carolina

PETITION FOR WRIT OF CERTIORARI

H. STANLEY FELDMAN
3691 Paramount Drive, Suite A
Charleston, SC 29405
(803) 747-4500

TERRY A. FINGER
PO Drawer 5280
Hilton Head, SC 29938
(803) 785-7606

ARMAND DERFNER
Counsel of Record
PO Box 600
Charleston, SC 29402
(803) 723-2460

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

34 pp.

QUESTIONS PRESENTED

The proceeds of a personal injury lawsuit filed by petitioner (a resident of Virginia) were attached by respondent to collect a prior judgment. If petitioner had been a South Carolina resident, the proceeds would have been protected under S.C. Code § 15-41-30, which exempts from levy the proceeds of personal injury suits received by South Carolina residents but not by residents of other states.

The following questions are presented:

1. Does S.C. Code § 15-41-30 violate the privileges and immunities clause of Art. IV, Sec. 2 of the Constitution of the United States?

2. Does S.C. Code § 15-41-30 violate the constitutional right of interstate travel?

PARTIES

The parties are shown in the caption.

TABLE OF CONTENTS

	Page
Questions Presented	i
Parties	ii
Table of Contents	iii
Table of Authorities	iv
Opinions Below	1
Jurisdiction	2
Constitutional and Statutory Provisions Involved	2
Statement of Facts	3
Reasons for Granting the Writ	5
1. The Privileges and Immunities Clause	5
a. The fundamental interest	6
b. South Carolina's state interest in the discrimination	8
2. The Right to Travel	11
Conclusion	12

TABLE OF AUTHORITIES

Page

CASES:

Austin v. New Hampshire, 420 U.S. 656 (1975) 6

Baldwin v. Montana Fish & Game Comm'n, 436 U.S. 371 (1978) 7

Cerny v. Salter, ___ S.C. ___, 429 S.E.2d 809 (1993) 9

Corfield v. Coryell, 6 Fed. Cas. 546 (C.C.E.D.Pa. 1825) 6, 7, 11

Crandall v. Nevada, 6 Wall. 35 (1867) 11

Edwards v. California, 314 U.S. 160 (1941) 10

Gary Concrete Prods. v. Riley, 285 S.C. 498, 331 S.E.2d 335 (1985) 10

Hickle v. Cornell, No. 91-CP-07-648 3

Hicklin v. Orbeck, 437 U.S. 518 (1977) 6

Integrity Ins. Co. v. Taylor, 295 S.C. 143, 367 S.E.2d 441 (Ct. App. 1988) 8

Memorial Hospital v. Maricopa County, 415 U.S. 250 (1974) 11

Mitchell v. Mitchell, 266 S.C. 196, 222 S.E.2d 499 (1976) 8

Mullaney v. Anderson, 342 U.S. 415 (1952) 6

Paul v. Virginia, 8 Wall. 168 (1869) 5

Supreme Court of New Hampshire v. Piper, 470 U.S. 274 (1985) 6

Supreme Court of Virginia v. Freedman, 487 U.S. 59 (1988) 6, 7

TABLE OF AUTHORITIES – Continued

Page

Toomer v. Witsell, 334 U.S. 385 (1948) 3, 5, 10

United Bldg. & Constr. Trades v. Mayor & Council of the City of Camden, 465 U.S. 208 (1984) 6

CONSTITUTIONAL PROVISION:

Art. IV, Sec. 2 of the Constitution of the United States 2, 3, 4, 5, 8

STATUTES:

S.C. Code § 15-41-30(11)(B) 2, 3, 8, 12

Va. Code Ann. § 34-28.1 11

No. 93-

In The

Supreme Court of the United States

October Term, 1993

BONNIE L. HICKLE,

Petitioner,

v.

AMERICAN SERVICE CORPORATION OF SOUTH CAROLINA,

Respondent.

On Petition For A Writ Of Certiorari To the Supreme Court of South Carolina

PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

The Opinion of the Supreme Court of South Carolina (September 20, 1993) is reported at ___ S.C. ___, 435 S.E.2d 870 (1993), and is reprinted at App. 1.

The Order of the state trial court (December 15, 1992) is reprinted at App. 5.

The Order of the Supreme Court of South Carolina denying a timely petition for rehearing (October 20, 1993) is reprinted at App. 10.

JURISDICTION

The Opinion of the Supreme Court of South Carolina was dated September 20, 1993, and a timely petition for rehearing was denied on October 20, 1993. This Court's certiorari jurisdiction arises under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Art. IV, Sec. 2 of the Constitution of the United States (first sentence):

> "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."

Subsection (11)(B) of S.C. Code 15-41-30:[1]

> "The following real and personal property of a debtor domiciled in this State is exempt from attachment, levy, and sale under any mesne or final process issued by any court or bankruptcy proceeding:
>
> * * *
>
> (11) . . .
>
> (B) a payment on account of the bodily injury of the debtor or of the wrongful death or bodily injury of another individual of whom the debtor was or is a dependent."

[1] The entire section 15-41-30 is reprinted at App. 11.

STATEMENT OF FACTS

In 1990, respondent won a judgment against petitioner in the Court of Common Pleas of Beaufort County, in the amount of $32,512.61. Efforts to collect that judgment were unsuccessful.

In 1988, petitioner was in an auto accident in Beaufort County, and filed a suit in the Court of Common Pleas of Beaufort County to recover for her bodily injuries. *Hickle v. Cornell*, No. 91-CP-07-648. She settled that case in 1992.

Before the settlement, however, respondent became aware of petitioner's personal injury suit and moved to attach the proceeds to satisfy its prior judgment.

Petitioner was a resident of South Carolina at the time of the prior judgment, and if she had remained, the proceeds of her personal injury suit could not have been attached by respondent, because of S.C. Code § 15-41-30(11)(B).

However, by the time her personal injury case was settled, she had moved to Virginia, and was therefore not protected from attachment because § 15-41-30(11)(B) protects only South Carolina residents.

Petitioner raised in the trial court the argument that the restriction to South Carolina residents contained in § 15-41-30(11)(B) violated her rights under Art. IV, Sec. 2 of the Constitution of the United States. The trial court agreed, citing *Toomer v. Witsell*, 334 U.S. 385 (1948), and holding that petitioner was constitutionally entitled to be protected just as South Carolina residents are protected. In its opinion, the trial court specifically found that South

Carolina had no substantial reason for discriminating against residents of other states.

On appeal, the South Carolina Supreme Court reversed. The Supreme Court evaluated the state statute under Art. IV, Sec. 2 of the Constitution of the United States, but cited none of this Court's cases. It simply applied a "rational basis" test, and held that the State had a legitimate interest in discriminating for the purpose of "directing benefits to its citizens" and thus "protecting South Carolina residents from financial indigency."[2]

One Justice concurred on the grounds of possible inconsistency with the exemption law of Virginia (petitioner's home state), although in fact Virginia's law also exempts the proceeds of a personal injury recovery.

A timely rehearing petition was denied.

This petition followed.[3]

---

[2] The trial court and the Supreme Court both quoted or cited Art. IV, Sec. 2, the "privileges and immunities clause," although they used the shorthand phrase "equal protection." In addition, the state courts used the statutory term "domicile" interchangeably with the terms "citizen" and "resident."

[3] The proceeds of petitioner's personal injury case were originally frozen by the trial court pending its decision, and the freeze was continued by the South Carolina Supreme Court pending appeal. Following the Supreme Court's decision, a Justice directed that the proceeds be paid to respondent but required respondent to post a bond to insure repayment in the event this Court should reverse.

REASONS FOR GRANTING THE WRIT

The writ of certiorari should be granted because the South Carolina Supreme court has decided the federal question in a way that conflicts with applicable decisions of this Court. Moreover, the constitutionality of this particular type of state statute raises an important question of federal law because residents-only exemption statutes appear to be widespread and growing throughout the United States.

1. The Privileges and Immunities Clause

The privileges and immunities clause, Art. IV. Sec. 2, has often been referred to as the fundamental glue that holds our Federal Union together – designed "to help fuse into one Nation a collection of independent, sovereign States." *Toomer v. Witsell*, 334 U.S. 385, 395 (1948):

> "The purpose of the Clause, as described in *Paul v. Virginia*, 8 Wall. 168 (1869), is 'to place the citizens of each State upon the same footing with citizens of other States, so far as the advantages resulting from citizenship in those States are concerned. It relieves them from the disabilities of alienage in other States; it inhibits discriminating legislation against them by other States; it gives them the right of free ingress into other States, and free egress from them; it insures to them in other States the same freedom possessed by citizens of those States in the acquisition and enjoyment of property and in the pursuit of happiness; and it secures to them in other States the equal protection of their laws. It has been justly said that no provision in the Constitution has tended so strongly to constitute

> the citizens of the United States one people as this." [Hicklin v. Orbeck, 437 U.S. 518, 524 (1977).]

The importance of the privileges and immunities clause has been repeatedly underlined in cases old and new, besides those quoted above. *E.g., Corfield v. Coryell*, 6 Fed. Cas. 546 (C.C.E.D.Pa. 1825) (Bushrod Washington, J.); *Mullaney v. Anderson*, 342 U.S. 415 (1952); *United Bldg. & Constr. Trades v. Mayor & Council of the City of Camden*, 465 U.S. 208 (1984); *Supreme Court of New Hampshire v. Piper*, 470 U.S. 274 (1985).

Some of these cases have involved subtle discriminations, for example, a complex interstate commuter tax. *Austin v. New Hampshire*, 420 U.S. 656 (1975).

In this case, however, there is no doubt about the discrimination, since the South Carolina statute says very plainly that its protections are for South Carolinians only. As the old saying goes, residents of other states need not apply.

Petitioner recognizes that the constitutional protection against interstate discrimination is not absolute. Recent cases have established a two-step inquiry: first, whether the subject of the discrimination is fundamental to the promotion of interstate harmony, and second, whether there is nevertheless a substantial state interest to which the discriminatory treatment is closely related. See *Supreme Court of Virginia v. Freedman*, 487 U.S. 59, 64-65 (1988). The statute involved here fails both these tests.

a. The fundamental interest. As to the first question, the leading example of a discrimination which was found

not to touch fundamental interstate relationships was the unequal elk hunting license fee which this Court upheld in *Baldwin v. Montana Fish & Game Comm'n*, 436 U.S. 371 (1978).

In this case, however, the discrimination affects the right of access to the courts, which is obviously one of the most fundamental interstate interests within the privileges and immunities clause. See *Corfield v. Coryell*, 6 Fed. Cas. at 552, where the rights protected from other states' interference specifically included the right "to institute and maintain actions of any kind in the courts of the state."[4]

Under the South Carolina statute, a South Carolina resident who has an auto accident or other personal injury is entitled to sue in the South Carolina courts and recover for his or her injuries, without a judgment creditor's intervention. A resident of any other state, however, who has an auto accident in South Carolina and sues in the courts of South Carolina, may not recover fully for personal injuries but rather is subject to having any recovery reduced or paid to a judgment creditor. That South Carolina simply abridges the right of access to the courts, rather than denying it entirely, does not minimize the violation. *Supreme Court of Virginia v. Freedman*, 487 U.S. at 66-67.

Nor are the consequences simply local. In this case, the judgment which respondent wished to collect was

---

[4] The Corfield v. Coryell list also included the right "of a citizen of one state to pass through, or to reside in any other state," which is addressed below in Part 2.

obtained in a South Carolina court, but the South Carolina courts also enforce judgments obtained in any other state or federal court in the Nation,[5] and are in fact required to do so by the full faith and credit clause of the Constitution which is adjacent to the privileges and immunities clause in Article IV. Moreover, the type of suit involved here, a personal injury suit, is the classic type of "foreign" suit, *i.e.*, an automobile accident suit involving a person traveling outside his or her home state.[6]

b. South Carolina's state interest in the discrimination. In passing exemptions laws, South Carolina has determined that its interest in enforcing judgments is limited by its interests in keeping judgment debtors from destitution. This is the same interest recognized in numerous exemption laws and in the federal bankruptcy law. Accordingly, S.C. Code § 15-41-30 exempts – *for South Carolinians* – such things as a portion of the interest in the debtor's residence, car, household furnishings, tools,

---

[5] Mitchell v. Mitchell, 266 S.C. 196, 222 S.E.2d 499 (1976) (foreign state court judgments); Integrity Ins. Co. v. Taylor, 295 S.C. 143, 367 S.E.2d 441 (Ct. App. 1988) (Foreign federal court judgments).

In this case, respondent's awareness of petitioner's personal injury lawsuit was made easier by the fact that it was filed in the same locale. However, the growing use of massive computer databases means that judgment creditors will soon be able to seek their remedies through instant access to court dockets nationwide.

[6] In this case, petitioner was a South Carolina resident at the time of the auto accident, and her proceeds would have been exempt if she had remained, but under South Carolina law she lost her exemption by moving to Virginia before judgment in her personal injury suit. See discussion below in Part 2.

medically prescribed aids, plus social security, disability, and veterans' benefits, as well as the personal injury proceeds involved in this case.

The South Carolina Supreme Court recently described the rationale for these exemptions: "to protect from creditors a certain portion of the debtor's property," *Cerny v. Salter*, ___ S.C. ___, 429 S.E.2d 809, 811 (1993). It went on to address the specific interest expressed by the personal injury proceeds exemption contained in subsection 11(b):

> "The purpose of a personal injury or wrongful death payment is to compensate the victim for something lost, rather than to provide a windfall award." [*Id.*]

There is no basis anywhere in this interest for finding a distinction between South Carolinians and people from other states.[7] Rather, the only distinction asserted by the Supreme Court was an interest in keeping its *own* citizens from becoming destitute. In other words, South Carolina asserts an interest in protecting its own, while beggaring citizens of all other states. That "interest" is exactly what the privileges and immunities clause bars. Nothing could

---

[7] Of course, there is a general interest in seeing that proper judgments are paid. In this case, petitioner asserts that there are sound reasons why her judgment has not been paid, but those are really irrelevant, because South Carolina has made the judgment that paying judgments takes second place to avoiding destitution; the meaning of the privileges and immunities clause is that South Carolina cannot make that judgment for its residents while making the opposite judgment for non-residents.

be more destructive of interstate relationships and, ultimately, the strength of the federal system. See *Edwards v. California*, 314 U.S. 160 (1941).

This Court has held that a discrimination against residents of other states may be upheld where such other citizens are the direct source of a particular evil that the State is entitled to combat. *Toomer v. Witsell, supra*, at 398. Manifestly no such condition is shown here.[8]

The only interest asserted by South Carolina is, in effect, an interest in directly violating the privileges and immunities clause.[9] It cannot be justified.

---

[8] Some distinctions in access to courts can be upheld for sound reasons, such as tolling statutes of limitations for out-of-staters. Likewise, some provisions of the exemption law may be constitutionally restricted to state residents, such as the historic "homestead" exemption on a personal residence, which by definition belongs only to a single principal residence of a person – so that a homestead exemption for a non-resident would be a contradiction in terms.

For petitioner to prevail, it is not necessary to hold that all other portions of the exemption law must be extended equally to non-state residents. It may be that some or many must be extended, but this case deals only with the fundamental interest of access to the courts in the form of the exemption for proceeds of a personal injury suit.

[9] Two other potential interests might be advanced on behalf of the State, but each one also fails.

First, the South Carolina Supreme Court cited one of its prior cases which had rejected a "privileges and immunities" claim based on this Court's "market participation" exception, Gary Concrete Prods. v. Riley, 285 S.C. 498, 331 S.E.2d 335 (1985), but that exception is inapposite here since it applies only to the State's own participation in business activities.

2. The Right to Travel

The right to interstate travel is the classic privilege and immunity created by the very act of joining the states together in a single Union. See *Corfield v. Coryell, supra.* The right to travel has developed along two separate lines, and both are involved here.

First, the classic right to travel involves the right of people simply to go from one state to another and travel through different states. *Crandall v. Nevada,* 6 Wall. 35 (1867). In this case, as noted above, South Carolina's refusal to exempt non-state residents means that every non-state resident who drives into or through the state (for example, on Interstate 95 from New York to Florida) is subject to a potential limitation on the right to sue if there is an auto accident. Nothing could be a clearer abridgement of the right to travel recognized in *Crandall.*

Second, in more recent years, the right to travel has come to comprehend the right to move one's residence from one state to another without being deprived of important benefits. E.g., *Memorial Hospital v. Maricopa*

Second, the concurring Justice below expressed concern about possible inconsistency with Virginia's exemption statute. This view might have supported a "choice of law" decision to apply *Virginia's* exemption law to petitioner, but the courts below did *not* make that choice of law, and if they had, petitioner would have been *exempt* because Virginia law has an exemption similar to South Carolina's. Va. Code § 34-28.1. (Whether a decision to give petitioner whatever benefits she is owed under Virginia law would be a constitutionally acceptable alternative to broadening the South Carolina statute to apply to her is unclear. See Ely, Choice of Law and the State's Interest in Protecting Its Own, 23 W.&M.L. REV. 173 (1981).)

County, 415 U.S. 250 (1974). In this case, petitioner was a resident of South Carolina when her auto accident took place. Under § 15-41-30, she could not move from South Carolina to any other state without losing her immunity that South Carolina thought was so important when she lived there. Nothing could be a clearer restriction on the "right to move" recognized in the recent cases.

CONCLUSION

For the foregoing reasons, the writ of certiorari should be granted.

Respectfully submitted,

ARMAND DERFNER
Counsel of Record
PO Box 600
Charleston, SC 29402
(803) 723-2460

H. STANLEY FELDMAN
3691 Paramount Drive, Suite A
North Charleston, SC 29405
(803) 747-4500

TERRY A. FINGER
PO Drawer 5280
Hilton Head, SC 29938
(803) 785-7606